O. Provl. Munis

File No. Corps/52

p 23E

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

Bombay Provincial Municipal

Corporations Act, 1949.

O. Provl. Munis Corps/52

File No.

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C O N T E N T S.

Legal Department File No. O.Provl.Munis.Corps/52 .

Sr.No.	R.I./O.No.	Subject.	pages.
		Opinions under the Bombay Provincial Municipal Corporation Act, 1949.	
1.	3142/23.2.52.	Government has to empower to exercise the functions under section 146 for the Officer in charge of the Indian Penicillin Committee.	1
2.	5147/ 4-4-52.	whether the corporation to levy octroi on quantities of rectified spirit imported in the Municipal Limp for the purposes of drug medicine but not on quantities of the spirit imported for manufacturing, bottling or making ready for sale excisable articles at the Govt. of Warehones.	3
3.	6464/26.4.52.	Whether the Ahmedabad Municipality can operate it services on extra Municipal routes.	5
4.	10209/19.6.52.	Bombay Provincial Municipal corporation Act 1949 sections 99 and 137(2).Special conservancy tax.	7-9
5.	686-Confl/8.6.52.	Whether any action can be taken against the corporation of the city of Poona for such action on the part of the mayor.	11-13
6.	9445/6.6.52.	Whether in view of the Explanations for sections 14.(1) of the Bombay Provincial Municipal Corporations Act 1949 can be granted any exemption to the vehicles and whether under section 38(4) of the Act, it is permissible for the corporation to enter into an agreement with the contolment Board for granting partial exemption from payment of Vehicles tax in respect of such vehicles.	15-17
7.	13909/26-8-52.	Whether the expenditure on tourist could be met from the corporations fund under section 66(42) of the Bombay Provincial Corporations Act 1949--section 142.	21 19

EKN.18/6/

M.R.No.				
8.	15652/23-9-52.		Bombay Municipal Corporation Act 1888- Section 180 -- Bombay Municipal Municipal Provincial corporations Act 1949--section 142.	21 21
9-	20984/A-13-12-52.		Whether the power under section 73 BB make a contract not exceeding Rs.Five Thousand or such higher amount as may be prescribed in that behalf under clause (c) of that section includes power to sanction estimates of work or incom expenditure for purposes of the Act up to that trust underlying that contract.	23-25
10-	20409/A.4.12.52-		Whether the Wheel tax is leviable in respect of vehicles boats and animals vesting in the crown under clause (5) of sub-section (1) of section 145 of the Bombay Provincial Municipal Corporation Act, 1949.	27-29
11.	21853/A.23.12.52.		Conservancy tax in respect of buildings occupied by the Poona Civil Courts under section 137(2) of the Bombay Provincial Municipal Corporation Act 1949.	31-33
12.	26266A 31-10-52.	21208 13-12-52.	Whether Govt. can insist upon advertising the post after the reduction of pay scales under section 457(3)(4)-	35-37.

EKN.10/6/

Legal Department.

Section 146 of the Act provides that no octroi shall be leviable on any article which, at the time of its importation, is certified by an officer empowered by the Government concerned in this behalf to be the property of the Government to be used or intended to be used solely for the public purpose and not to be used or intended to be used for purposes of profit. By the words "Government Concerned" it is intended to provide ~~maxima~~ that both the Central and the State Government shall not be liable to pay octroi where the articles imported are the property of the respective Government and the officer under the control of the respective Government issues a certificate as required by that section. It is understood that the officer-in-charge of the Indian Penicillin Committee has been appointed by the central Government. In that case the Central Government will have to empower him to exercise the functions under section 146.

Sd/- J.R.D. 27/2

Additional Secretary to Govern ment.

U.O. to L.S.G. & P.H.D.No.3142, dated the 27th February 1952.

EKM.18/6/

Office of the R.L.A.

As the Drugs Controller has stated that rectified spirit can be considered to be a drug, it would be competent for the Poona Municipal Corporation to levy octroi on quantities of such spirit imported for the purpose of being used as a drug; the proposal made by the Local Self Government and Public Health Government would appear to be legally feasible. However, if any quantity of rectified spirit is even for this purpose imported on Government account and the same is intended to be used for public purposes without profit it would be exempt from the levy of octroi.

Sd/ P.M. Lad. 2/4

Remembrancer of Legal Affairs.

U.R. to L . G.G. & P.H.D. No.5147, dated the 4th April 1952.

EKH.18/6/

Office of the R.L.A.

The combined effect of the provisions of sections 66(20), 89 and 342 (2) of the Bombay Provincial Municipal Corporations Act, 1949. authorizes the Municipal Corporation of the City of Ahmedabad to operate transport services outside the City. Whether the Corporation should be allowed to do so in preference to the Bombay State Road Transport Corporation is a question of policy.

Sd/ P.M.Lad. 25/4

Remembrancer of Legal Affairs.

U.R. to H.D. No.6464, dated 26th April 1952.

EKN.18/6/

Office of the R-L.A.

Bombay Provincial Municipal Corporations Act, 1949, sections 99 and 137(2)

Special Conservancy tax.

It appears that, on the recommendation made by the Municipal Commissioner, the Standing Committee of the Poona Municipality approved by its resolution No. 220 dated 13th October 1950 the levy of the conservancy tax with effect from 1st April 1950 at a special rate of annas 8 per head per month in respect of the Central Buildings and the temporary Secretariat Offices at Poona. The question raised for the R.L.A. consideration is whether the levy of the conservancy tax under section 137(2) of the Bombay Provincial Municipal Corporations Act, 1949, can be made with retrospective effect from 1st April 1950 as proposed by the Poona Municipality.

It is that section 99 of the Bombay Provincial Municipal Corporations Act, 1949, may have no application to the special conservancy tax levied under section 137(2) but sub-section (1) of section 137 gives power to the Commissioner to fix the conservancy tax whenever he thinks fit. Sub-section (2) provides that in the case or premises used solely for public purposes and not used or intended to be used for purposes of profit or for residential or charitable or religious purposes in respect of which the conservancy tax is payable by the Crown the Commissioner shall fix the said tax at a special rate approved as aforesaid. The approval of the tax as fixed by the Commissioner is to be given by the standing Committee. It is, therefore, apparent that it is only after the approval of Standing Committee that the special conservancy tax becomes leviable. The levy of a tax in the absence of any specific provision in the Act cannot be retrospective and consequently the levy of the

conservancy.....

conservancy tax in the present case under section 137(2) would be considered as prospectively done and would, therefore, be payable with effect from 13th October 1950 and not with effect from 1st April 1950 as stated by the Municipal Commissioner.

Sd/ P. M. Lad. 18/6

Remembrancer of Legal Affairs.

U.O. to L.S.G. & M.H.D., No.10209, dated the 19th June 1952.

EKM.18/6/

R.I.No. 584-Confl. dt. 12-7-1951
14

S.A.S. :

As a protest against the increased food prices, Shri Baburao Sanas, Mayor of the Poona Municipal Corporation and other persons issued a press-note urging the people to observe complete Hartal on 29th May 1952. The question for consideration is whether any action can be taken against the Corporation of the City of Poona for such action on the part of the Mayor.

Sd/-E.F.N.
15-7

DS(Civil)

Sd/-H.".Katarki
15-7

R.L.....
Sd/-P.M.Lad
15-7

Please see:-

U. . to L.S.G. & P.H.D. No. 686-Confl. dated the 17th July 1952.

S.A.K.
1-8
4 copies

OFFICE OF THE R.L.A.

Seen and returned.

No action can be taken against the Mayor or the Corporation for the Press-note at page 3 ante. It is, however, open to the Corporators to question, by a suitable resolution, his authority for signing the press-note as Mayor, Poona Corporation.

Sd/ P. M. Lad. 17/7

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.686-Confl, dated the 17th July 1952

EKN.16/6/

OFFICE OF THE R.L.A.

The questions for R.L.A's consideration are:-

(1) whether in view of the explanation to section 142(1) of the Bombay Provincial Municipal Corporations Act, 1949, any exemption can be granted in respect of vehicles kept for use within the limits of the Cantonment area but are regularly used in the City of Ahmedabad;

(2) Whether under section 32(4) of the Act, it is permissible for the Corporation to enter into an agreement with the Cantonment Board for granting partial exemption from payment of vehicle tax in respect of such vehicles.

The explanation provides that a vehicle, boat or animal kept outside the limits of the City but regularly used within such limits shall be deemed to be "kept for use in the City." Under section 142(1) read with the Explanation the vehicles though kept for use outside the limits of the City but are regularly used within such limits, would be liable to payment of the tax. The power to tax does not give the power to exempt and unless specially exempted by statute, the burden of taxation must fall equally on all persons and property within the corporate limits. The exemption should be denied to exist unless it is so clearly granted as to be free from fair doubt (see p.262 of Aiyangar's Municipal Corporation). The various categories of vehicles which are exempt from payment of the tax in question are mentioned in ~~xxxx~~ clauses (a) to (f) of section 143(1). Since no provision for partial exemption of the kind now contemplated is made anywhere in these provisions the Corporation cannot give any exemption from the levy of the tax, or enter into any arrangement with the Cantonment Board for giving any exemption.

An octroi as defined in clause (42) of section 2 or I toll' is different from a tax on vehicles, section 32(4) permits the Corporation to enter into an agreement with another local authority merely for purpose of the levy of octroi or toll.

The.....

The Corporation cannot, therefore, enter into any arrangement with the Cantonment Board with respect to levy of tax on vehicles.

The answer to both the questions is, therefore, in the negative. The view at A and B of the L.S.G& P.H.D. is correct.

Sd/ P. M. Lad. 4/6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No.9445, dated the 6th June 1952.

RKM.18/6/

OFFICE OF THE R .L.A.

Under section 68 of the Bombay Provincial Municipal Corporations Act, 1949, the moneys from time to time credited to the Municipal Fund shall be applied in payment of all sums, charges and costs necessary for carrying the Act into effect. Sections 63 to 66 specify the obligatory and discretionary duties of the Corporation. The promption of the development of tourist traffic does not appear to fall under any of the clauses of sections 63 or 66. The L.S.G. & P.H.D. has referred to the omnibus provision in clause (42) of section 66 under which the Corporation can, in its discretion, provide for any measure not thereinbefore specifically named, which is likely to promote public safety, health, convenience or instruction. Apparently the word "Public" qualifies all the words following. The Tourist Office has been opened for the convenience of the travellers from outside the municipal area and not so much for the convenience of the residents of the municipal area. The convenience referred in clause (42) is that of the residents of the municipal area and not of the visitors thereto. A Municipal Corporation is not empowered to spend money for the convenience of the outsiders. The position of a municipal Corporation with reference to the Municipal fund is that of a trustee. Corporation can spend moneys only on the objects specified in the Statute and any payment not so authorised will be ultra vires (vide Kyengar's Law of Municipal Corporations, pp. 221-222). To spend money out of the municipal fund on the equipment and running of the Tourist Office would not be for a municipal purpose. It does not therefore appear that the proposed expenditure can be debited to the municipal fund of the Corporation.

Sd/. P. M. Lad. 28/6

Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D.No.13909, dated the 16th August 1952.

RM.18/6/

Office of the R.L.A.

Bombay Municipal Corporation Act, 1888, section 180

Bombay Municipal Provincial Corporations Act, 1949, section 142.

The view taken by the Home Department on the first question is correct. To avoid the impact of double taxation section 180 of the Bombay Municipal Corporation Act, 1888, and section 142 of the Bombay Provincial Municipal Corporations Act, 1949, will have to be amended on the lines of the proviso to section 73(2) of the Bombay Municipal Boroughs Act, 1925.

2. On the second question it appears that it may not be quite necessary to amend the Municipal Acts. For the purposes of levying taxes it is not by - laws but rules that will have to be framed and the rules require the previous sanction of Government. While giving sanction to the rules, therefore, it os open to Government to consider the reasonableness or otherwise of such rules. Further, section 102 of the Bombay Municipal Boroughs Act, 1925, provides that if Government considers that any tax leviable by a municipality is unfair in its incidence etc., it may require tne municipality within such period as the Government shall fix in this behalf to make measures for removing any objection which appears to it to exist in tne s aid tax; and if, within the the period so fixed such requirement shall not be carried into effect to the satisfaction of the Government, it may by notification suspend thelevy of such tax on such part thereof, until such time as the objection thereto shall be removed. A similar provision is contained in the Bomvay District Municipal Act, 1901. Under the rules of the modasa Municipality a wheel tax is recoverable for the entire year on vehicles plying within the municipal limits for more than 30 days. It appears that thist ax is unfair in its incidence because if a vehicle is kept in the said municipal limits for a short period, say for 31days, it would become liable to the wheel tax for the whole year. Consequently, the Modasa Municipality and the

other.....

other municipalities which have been levying taxes on similiar basis may be asked to amend their rules for levying the tax on quarterly and annual basis so that this kind of unfairness in the incidence of the tax may disappear. For this purpose Government can take action under the aforesaid provision requiring the Municipality to amend the rules.

Sd/- P. M. Lad. 22/9

Remembrancer of Legal Affairs.

U.R. to H.D. No15652/A, dated the 23rd September 1952.

EKN.18/6/

Office of the R.L.A.

There is no express provision in the Bombay Provincial Municipal Corporation Act, 1949, vesting power in any authority to give sanction of the estimates of works to be executed by the municipality. Ordinarily the estimates of work to be executed within the budget are prepared by the staff of the municipality and before contracts for the same are actually given or tenders invited for the purpose, the municipality is required to consider what would be the probable cost of execution of the work, that is to say, the estimate for the same to see whether the offers made for execution of that work are reasonable. Under section 67, sub-section (3) the entire executive power for the purposes of carrying out the provisions of this Act, subject to the conditions mentioned therein, vest in the Commissioner. It would, therefore, be apparent that unless otherwise expressly provided in the Act, the power to give administrative sanction of the estimates would ordinarily vest in the Commissioner has the power of making contracts which would involve an expenditure not exceeding five thousand rupees. The power to make the contracts would include power to sanction the estimates of such works which would be necessary before he could make the contract. The view taken by the Municipal Commissioner Poona, appears to be correct. If the local Self Government and Public Health Department considers it desirable that there should be an express provision in respect of the power to sanction the estimates of works there would be lo legal objection to framing rules under section 457, clause (xvii). But such rules will have to provide for powers of

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the Municipal Commissioner in respect of contract falling under section 73, clause (c).

Sd/ P. M. Lad. 11/12

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.,No.20984, dated the 13th December 1952.

EKN.18/6/

OFFICE OF THE R.I.A.

Clause (b) of sub-section (1) of section 143 of the Bombay Provincial Municipal Corporations Act, 1949, provides that wheel tax shall not be leviable in respect of vehicles, boats and animals vesting in the Crown and used solely for public purposes and not used or intended to be used for purposes of profit, including vehicles, boats and animals belonging to the Defence Forces. Sub-section (2) of that section provides that if any question arises under clause (b) of sub-section (1) whether any vehicle, boat or animal vesting in the Crown is or is not used or intended to be used for purposes of profit, such question shall be determined by the Provincial Government whose decision shall be final. The Milk Supply Scheme at Ahmedabad and Poona is run purely on a 'no loss no profit' basis. It is, therefore, apparent that Government does not intend to make any profit by this scheme. Consequently, the vehicles that have been used for the transport of milk to Poona and Ahmedabad would be exempt from the Wheel tax under clause (b) of sub-section (1) of section 143 of the Act. Since the Ahmedabad and Poona Corporations have questioned the exemption from the Wheel-tax, Government may issue an order under sub-section (2) of section 143 that the vehicles used for the purposes of the scheme are not intended to be used for purposes of profit and this decision of Government shall be final.

2. As regards the Licence fee, it is true that under section 383, a license should be necessary for carrying on the business of supply of milk; but section 392 provides that whoever contravenes any

provision.....

provision of any of the sections specified in the first column of Part I of the table in Appendix II shall be punished for such offence with a fine which may extend to the amount mentioned in that behalf in the second column of the said part. In Part I of Appendix II the penalty prescribed for the breach of the provisions of section 383 may extend to Rs. 20/- for the first offence and under Part II of Appendix II a penalty extending up to Rs.20/- per day is imposed if the offence is continued. Generally speaking when the words used are "person or persons" the Crown is not bound. (See R.V.Duffy (1849) 1 I.R.Jr.81). Moreover, as penalty is prescribed by section 392 for contravention of the provisions of section 383, if theprovisions of section 383 are held to be applicable to Government that would effect the prerogatives of Government. It is, therefore, evident that the provisions of section 383 are not intended to apply to Government and Government is not bound to take out a licence. (See Additional Secretary's opinion No.C.580 dated 26th November 1952 and also R.L.A's Opinion No.3198 dated 24-3-1949)-.

Sd/ P. M. Lad. 4/12

Remembrancer of Legal Affairs.

EKN.10/6/ U.R. to L.S.G. & P.H.Deptt.No.20409/A dated the 6th December 1952.

Office of the R.L.A.

Section 137(2) of the Bombay Provincial Municipal Corporations Act, 1949, provides that in the case of premises used solely for public purposes and not used or intended to be used for purposes of profit or for residential or charitable or religious purposes in respect of which the conservancy tax is payable by the Crown the Commissioner shall fix the said tax at a special rate approved as aforesaid. Sub-section (3) provides that in any such case the amount of the conservancy tax shall be fixed with reference to the cost or probable cost of the collection, removal and disposal, by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises. Reading these provisions together it would be clear that conservancy tax in respect of such premises can be fixed at a special rate but that special rate will have to be relatable to the cost or probable cost of the collection, removal and disposal by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises. The Poona Municipal Corporation seems to have fixed the conservancy tax in respect of the Poona Civil Court Buildings on the basis of the probable number of occupants of the said buildings at 650. This basis is apparently incorrect. The visitors of the Civil Court buildings cannot be considered as occupants of the buildings, but at the same time, they cannot be ignored while fixing the conservancy tax at a special rate; for, the visitors will add to the cost or probable cost of collection, removal disposal etc., of excrementitious and polluted matter from the premises. The proper basis would, therefore, be what would be the cost or probable cost of collection etc. of excrementitious and polluted matter from the premises. The District Judge, Poona, in his report dated 26th August 1952 has stated that conservancy tax of Rs.3900 per year demanded

by the Poona

Municipality appears to be disproportionate to the probable cost required to be incurred by the Corporation as very little is done by the Corporation staff for the collection, removal and disposal of excrementitious and polluted matter from the Civil Court premises. If this view of District Judge, Poona, is correct, the conservancy tax demanded by the Poona Municipality can be challenged. It appears therefore, necessary to have the statement of the District Judge verified through the Public Works Department. If the Public Works Department supports this statement of the District Judge, Poona, legal steps may be taken to challenged the conservancy tax levied by the Poona Corporation.

Sd/ P.M. Lad. 24/12

Remembrancer of Legal Affairs.

U.R. to H.D.No.2183/A dated the 26th December 1952.

EKN.19/6/

L.D.R.I. No.26266, dt.31-10-52.

Submitted with reference to L.S.G. & P.H.D. note at pp. 77 to 80.

The Ahmedabad Municipal Corporation created a post of a Superintendent of Lighting and Power Plants in the grade of Rs. 500-25-750 plus Rs.150 car allowance and advertised it inviting applications. The minimum qualifications prescribed for the post were that the candidate should be a graduate in Mechanical and /or Electrical Engineering of at least 12 years standing etc. Six applications were received and the Standing Committee selected Shri N.P.Shah for the post which was approved by the Municipal Corporation. Subsequengtly the Corporation obtained sanction of Govt. for the creation of the past.

Govt. thereafter sanctioned the rule laying down that the candidate for the post should be a graduate in Mechanical and Electrical Engineer instead of in Mechanical or Electrical Engineer as proposed by the Corporation.

Thoughh Shri Shah was graduate of Electrical Engineering he had obtained a First Class Mechanical Engineer's proficiency certificate and had wide experience in electrical and mechanical engineering. The Corporation therefore considered him aptly suitable for the post and therefore requested Govt. to revise its rule relaxing qualification of the candidate. Govt. refused to revise the rule and insisted that the post should be advertised according to the terms of the sanction. Instead of advertising the post as directed, the Corpora ion reduced the pay scale of the post to Rs. 350-25-750 and now states that as the post is no longer covered by sections 51(4) and 53 (1) of the Bombay Provincial Municipal Corporations Act, 1949 Govt. sanction is not nece ssary. L.S.G. & P.H.D. agrees that as the post

now.....

now is not covered by section 51(4) Govt. sanction is not necessary. That Deptt. also consideres that after reduction in the pay scale the post is covered by section 457(3) (b) and as such post is not required to be filled in by the Corporation it need not be advertised and therefore Govt. cannot insist upon advertisiging it. The R.L.A.is requested to advise.

EKN.19/6/

Office of the R.L.A

Seen and returned.

Strictly speaking the corporation should have abolished the post created with the sanction of Government in the grade of Rs.500-25-750 and created a new post in the grade of Rs. 350-25-750 instead of reducing or revising the grade of that post.

Ld/ [illegible]. Lad. 12/12

Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D., No. 21028, dated the 13th December 1952.

EKN.19/6/